1889-033 Chancery Cause: Gdn. of Napolean B. Smith &c by vs. Napolean B. Smith &c
Lee Co.

McKee, Yeary, Covey, Leadford, Burgan

CA - Estate Dispute
T - Property

- Deed

To the Hon. H. S. K Morison Judge of the Circuit Court of Lee County Virginia

The bill of complaint of George W. Smith, who is the guardian at law for Napoleon B Smith, Samuel L. Smith and Ulyses G. Smith minor heirs at law of Jonathan L. Smith decd. all of whom are under 14 years of age; the first of whom being 12, the second 10 and the third and last being 8 years old.

Your Orator states that he was duly and regularly appointed guardian for said three children by the Court of Lee county, and gave such bond as is required by law.

Your Orator states that some 10 or 20 years ago One Henry H. Yeary departed this life, after having made his last will and testament which has been duly proven and admitted to record. the owner of a valuable tract of land supposed to contain about 160 acres, lying and being in said county of Lee, near what is known as the Hubbard Springs, and about 7 miles west of Jonesville

The said Henry H Yeary left at his death a widow Ruth Yeary surviving him, who is now alive but is quite old. And by said H. H. Yearys last will he devised to his said widow, the use rents and profits of said farm during her natural life and at her death the same is to go to his heirs at law, so that said tract of land is still encumbered by said life estate.

Your Orator states that Jonathan L. Smith the father of his said wards was the owner by purchase from two of the grand children of said H H Yeary of One undivided eighth part of said tract of land, subject to said life estate.

Your Orator states that said Jonathan L. Smith at his death left a widow (the Mother of said three children) - Rosa B. Smith surviving him, and this his said widow will be entitled to dower in said 1/8 of said land after said life estate shall expire, Your Orator States that said Rosa B Smith before her Marriage with said Jonathan L Smith was Rosa B. McKee, and a great Great Grand daughter of the said Henry H. Geary, and a grand child of Malinda Cary who was a daughter of said Geary.

Your Orator States that said Malinda Cary died a few years ago the owner of One undivided eighth part of said Geary farm and she left at her death three living children and the said Rosa B. Smith the only heir at law of her deceased son by her first Marriage her heirs at law, so that the said Rosa B Smith is now the owner in her own right of One fourth of One undivided eighth part of said tract of land and a right of dower in the share owned by Your Orators wards at the termination of said life estate.

Your Orator states that in addition to said life estate on said farm it is in an undivided condition, is greatly out of repair, has been greatly injured by bad cultivation and that there is not a sufficient amount of timber on the farm to re-fence ~~from~~ the same

Your Orator states that said farm thus far has not yielded his said Wards any thing in the way of rents and profits and cannot yield them any thing, untill said life estate shall terminate & was it now at an end it would require several years to put said farm in a condition to yield them any thing.

Your Orator states that his said wards are very poor, and are being supported by their Mother the said Rosa B. Smith

Your Orator now States that he acting as he believes for the best interest of his said Wards, and the said Rosa B Smith acting for herself and in her own right, have Mutually agreed with each other to exchange the interest of said Wards and the interest of the said Rosa B Smith in the said H.H. Geary farm, to One Marquis L. Geary for about 50 or 60 acres of land lying in the same neighborhood but a part of a different farm, provided a court of equity will ratify and approve the said agreement on the part of your Orators said wards, Your Orator states that the said Rosa B. Smith has conveyed her 1/4 of 1/8 part of the said H. H. Geary farm and her dower right in 1/8 thereof to the said Marquis L. Geary, and the said Marquis L. Geary is now ready and willing to convey to said Rosa B. Smith and to your Orators three wards said 50 or 60 acres of land, with covenants of general warranty, and in the same proportion and subject to the same dower right, as the lands now held by them ages in the H. H. Geary farm, so soon as a court of equity will ratify and approve said exchange in the part of his wards and shall appoint a commissioner to convey to him on the part of [illegible].

Your Orator now states, that the interest of his said wards will be promoted by the exchange of lands herein proposed & detailed, and he is advised that it is competent for a court of equity to ratify approve and order and decree such exchange, and to attain that end is the object of this Bill.

Your Orator therefore prays that said Napoleon B. Smith Leonard L. Smith, Ulysses G. Smith, Rosa B. Smith and Marquis L. Geary be made defendants to this bill and be required to answer the same upon Oath, that a Guardian ad Litem be appointed for said three infants to defend their interest in this cause, and on a hearing of the cause a decree be rendered ordering and decreeing the exchange herein detailed and proposed

May the commonwealths writ of Spa issue directed &c.

John M Morgan pr Pltff

I do solemnly swear that the statements made in the foregoing bill are true as I verily believe so help me god,

Geo. W. Smith

Sworn to before me by G. W. Smith the 26 day of Marh 1887,

E M Russell J. P.

George W. Smith Guardn

vs. } Bill for Ex. of land

Napoleon B. Smith et al

1889 April Term
" Cause came on
" on answer & Bill
" Decr & Continued
" Sept. Decree final

C	5.95
J.P.	1.75
G.A.L.	5.00
A	15.00
	27.70
	5.54
	$22.16

To the Hon H S K Morison Judge of the Circuit Court of Lee County Virginia:

The separate answer of Rosa B Smith widow of the late Jonathan L. Smith decd to a bill exhibited in this Honorable court against her and others by George W. Smith Guardian for N B. Smith & others.

For answer to said Bill or so much thereof as she is advised it is material for her to answer, answering says that it is true that she in her own right has agreed with M L. Geary to convey to him her one fourth of one undivided eighth part in the said H H Geary farm. and her right of dower in the one eighth part thereof owned by her children who are the wards of the plaintiff upon the terms and conditions set out by the plaintiff in his bill And she has conveyed said interests to him by proper deed herewith filed as part of this answer Marked (A B) and the same to be delivered to him, when the exchange of land in the bill mentioned shall have been ordered and decreed in this cause, as to the infant defendants, and the said Marquis L. Geary shall have conveyed to respondent and said three infants, the 50 or 60 acre tract of land in the same proportion to their interest in the H H. Geary farm.

Respondent says that the land which she and said infants are to get in the proposed exchange is unencumbered, Has a dwelling house thereon is in a body to its self & has plenty of Water and timber thereon And she is of opinion that the exchange proposed is a good one and will promote the interest of said Infants, And having now answered as fully as deemed necessary she prays that said exchange be made & decreed on the part of said infants as prayed for in the bill:

H J Morgan for Respondent

I do solemnly swear to the truth
of the statements made in the
foregoing Answer so help me god

Rosey B Smith

Sworn to before me the 26th day of march 1889.

E M Russell J. P.

Rosa B Smith
ads. } Answer
Geo. W Smith Guard.

Filed April 6 Term/889
J A Stoppett Clk

To the Hon H. S. K. Morison Judge of the Circuit Court of Lee County Virginia

The Seperate answer of Marquis L. Geary to a bill filed in this Honorable court against him and others by George W Smith guardian for N B. Smith and others

For answer to said Bill or so much thereof as he deems it necessary or material for him to answer, answering says it is true as stated in the plaintiffs bill that he has agreed with the plaintiff as the guardian for his said wards and with his co defendant Rosa B. Smith to convey to her and said three infants with covenants of ~~Special~~ general warranty the 50 or 60 acre tract of land in the pltffs bill mentioned on the condition and in the manner therein stated. This land lies on Trading creek in said county and is a part of the land which respondent purchased from the Blankenships heirs

Respondent now files herewith as a part of this answer marked (A B) a deed of conveyance on the part of himself and wife, by which they convey to said Rosa B. Smith and Napoleon B. Smith Leonard L Smith and Ulysses G. Smith said tract of land with covenants of General warranty, and this deed of conveyance is to be delivered to them when a commissioner shall be appointed and directed to convey to your Orator said three infants undivided interest in the H Geary farm. And by this his said conveyance Respondent & his wife convey to said Rosa B. Smith one undivided fifth part of the said 50 or 60 acre tract, and to said three infants four fifths thereof in its undivided condition, and this last four fifths is to be subject to the dower right therein of said Rosa B. Smith

And Respondent having now answered as fully as deemed material prays to be hence dismissed

M. L. Geary

Marquis L Geary
ads. } Answer
Geo W Smith Guardn

Filed Apr Term 1889
J A S Goyatte

To the Hon H. S. K Morison Judge of the Circuit Court of Lee County Virginia

The Answer of Napoleon B. Smith, Leonard L Smith and Ulysses G. Smith infant defendants to a bill filed against them & others by George W Smith their Guardian by Henry J Morgan their guardian ad Litem

Respondent says his said wards are young and of tender years and being such are the peculiar wards of courts of equity & hence their interest in this suit is respectfully submitted to your Honors care and keeping.

Respondent has some personal knowledge of the H H Geary farm, and the farm or land owned by M. L. Geary which is proposed to be exchanged for respondents wards interest in the first in part, but he is not sufficiently well acquainted with either to express any opinion as to the propriety of the exchange proposed all he can say is, that he will have to abide by the opinion and judgment of those well acquainted with the land in question

Respondents wards have not given him any information touching the matter, nor have others done so

Respondent having now answered as fully as deemed material prays that his wards be hence dismissed with their costs

Henry J Morgan G A Litem for
said Infants.

N B. Smith & al by Guard.

ads } Answer

George W Smith Guard &c

Filed Apr. Term 1889
J H Wyatt C

George W. Smith Guard & Pltff }
vs. } In Chy
Napoleon B Smith & others Defts }

This cause came on to be finally heard on the papers heretofore read therein and the report of Comr. John M. Morgan dated and filed in the cause May the 29 1889. showing the execution of the deed of conveyance as directed by the decree entered in this cause on the 2nd day of April 1889, and was argued by counsel, and the said report and deed, being unexcepted to. On consideration whereof It is adjudged ordered and decreed, that said report and deed be and the same are hereby confirmed, and the clerk of this will deliver said deed to the clerk of the county Court for recordation, and the defendant M. L. Young will pay four fifths of the cost of this suit, and the deft Rosa B Smith will pay the one fifth thereof, and no further action being necessary in the cause the parties are hence dismissed and the cause stricken from the dockett.

Geo W Smith Guardn

vs. } Decree No. 2 final

N. B. Smith & others

Entd Page 205
Hyatt C.C.

Enter this
Sep 2nd 1889.

George W Smith Guard &c Pltff }
vs. } In Chy
Napoleon B. Smith & others. Defts }

This cause came on to be heard on the bill of the Pltff the answer of M. L. Geary. the answer of Rosa B Smith the answer of the then infant defendants Napoleon B Smith Leonard L. Smith and Ulysses G. Smith by their guardian ad litem. Henry J Morgan the deposition of witnesses, and was argued by counsel, On consideration of all which it appears to the court that the interest of the infant defendants will be promoted by the proposed exchange of land in the bill mentioned It is therefore adjudged ordered and decreed that said exchange be made and that the deft M. L. Geary take and hold said Infants undivided interest in the H H Geary farm consisting of one Eighth part thereof. And John M Morgan is appointed a commissioner to convey the same on the part of said Infants to said M. L. Geary. and he will report his action to the court. And the said M L Geary is ordered to deliver his and his wifes deed of conveyance filed with his his answer to said Rosa B. Smith and Napoleon B. Smith Leonard L. Smith & Ulysses G. Smith for the 50 or 60 acre tract of land in the bill mentioned. to them as a consummated act And Rosa B Smith will deliver her deed filed with her answer to said M. L. Geary. and the cause is continued

George W Smith Guard

vs. } Decree No 1.

Napoleon B Smith &al

Entd. Pages 190 & 1.

Chancery O. B No 8

J. G. Hyatt C

Enter this
April 2 1889

George W. Smith Guard &c. Pltff
vs. } In Chy
Napoleon B Smith & others Defts

To Henry J. Morgan Guardian ad Litem for Napoleon B. Smith Leonard L. Smith and Ulysses G. Smith take notice that at the house of E M Russell in Lee County Va. on the 26th day of March 1889 I will proceed to take the deposition of Aley Ladford & G. F. E Burgan & al which when taken are intended to be read as evidence on the part of the plaintiff in the above styled suit, upon the hearing thereof and during the examination of said witnesses the annexed questions will be propounded to them respectively. March the 22d 1889.

George W. Smith Guard &c

1 Please state whether or not you are acquainted with the old H H. Geary farm, and if so, state how near you live to it, and what its condition is as to its state of cultivation and repairs &c.

2 Please state as near as you can what one undivided ~~eigh~~ eighth part of said H H Geary farm is reasonably worth in its present condition, subject to the life estate of Ruth Geary therein?

3 Please state ~~what~~ what the condition of said farm is with reference to building and rail timber?

4 Please State whether or not you are acquainted with the 50 or 60 acre tract of land four fifths of which W.L. Geary proposes to exchang with the infant defendants for their one eighth part of the H H Geary farm? and if so state how near you live to it, and its condition as to cultivation? state of repair and its supply of timber water other conveniences?

5 Please State as near as you can what four fifths of said tract of land is reasonably worth in its present condition

6 Please State which you think is worth the most as the land now stand. four fifths of said 50 or 60 acre tract, or One undivided eighth part of the H H Geary farm?

7 Please State whether or not, the interest of these infant defendants would be promoted by the exchang of the lands proposed, or would such exchange be injurious to their interests

I accept legal service of the foregoing notice and agree that the Statement of said witnesses be taken on said questions

Henry J. Morgan G ad litem
for said three infants.

George W Smith Guardian &c 3 Ch chy
vs
Napoleon B Smith et al 3
Taken at the House of E M Russell in above styled cause
The Deposition of Aley Leadford and Geo F. E. ~~Burgess et al~~ witnesses of Lawful age after being first duly sworn deposes and say's in answer to question 1st as agreed on by Plaintiff and Guardian ad Litem,

Ans 1st I am. about one mile. it is not in a good state of cultivation, and in bad repair

Ans to 2nd question
about four hundred dollars

Ans to 3d question,
very little building or rail timber

Ans to 4 question,
I am very well acquainted with it
about one mile. not very good
a good spply of fine timber
a very good house plenty of good water a good stable and other buildings

Ans to 5th question
about five hundred dollars

Answer to 6th question,
I had little rather have 4/5 of the 50 or 60 acre tract

Answer to 7th question,
I think it is to the advantag of the infant to make said exchange

Aly Ledford

G. F. E. Burgan an other witness of Lawful age after being duly Sworn deposes and says in

Ans to first question,

I am, was raised on it
I live adjoining it, in a bad state of cultivation, in bad repair

Ans to 2nd question

I think $300 is a big price for it

Ans to 3rd question,

very bad building and not much timbe of any kind

Ans to 4th Question

I am I helped to partition it
about 1½ miles, it is in very good state of cultivation, it has plenty of good timber, it has plenty of water

Answer to 5th question

I think it is reasonably worth $500

Ans to 6th question,

I think 4/5 of the 50 or 60 Acre tract is worth about $50 the most

Ans to 7th question,

I certainly do

G. F. E. Burgin

I E. M. Russell a Justice of the peace in for said county of Lee and State of Va do certify that Aley Ledford and G. F. E Burgin whose names are signed to the foregoing Depositions was given signed and sworn to before me at My house on the 26th day of March 1889.

Given under my hand and Seal the 26th day March 1889.

E M Russell J.P. (Seal)

George H Smith Guardn

vs. } Depo

Napoleon B Smith et al

Filed Apr. Term 1889
J A G Hyatt cc

George W. Smith Guard &c Pltff
vs. } In Chy
Napoleon B Smith &others Defts

To the Hon H S K Morison Judge of the Circuit Court of Lee County Virginia

Pursuant to your decree entered in this cause on the 2nd day of April 1889. I have executed and acknowledged for record a deed of conveyance as Comr. by which I have conveyed with covenant of Special Warranty the defendants. Napoleon B Smith, Leonard L. Smith & Ulysses G. Smiths undivided interest in the H H Geary farm consisting of One eighth part thereof to Marquis L. Geary.

Respectfully Submitted
John M Morgan Comr.
May 29 1889.

George W. Smith Guard.

vs. { Com. Report of Deed

Napoleon B. Smith et al

Filed May 29 1889.
J A G Hyatt c c

This deed made this 22nd. day of March 1889 between Marquis L. Yeary and Louisa Yeary his wife of the first part, and Rosa B. Smith, Napoleon B. Smith, Leonard L. Smith and Ulysses G. Smith the last three of whom are infants of Jonathan L. Smith decd, of the second part, all of the county of Lee State of Virginia Witnesseth that for and in exchange for other lands, the said M. L. Yeary and wife do by these presents give grant bargain sell deliver and convey unto the said parties of the second part a certain tract or parcel of land containing some 50 or 60 acres lying and being in said county of Lee, and on the waters of Trading creek the same being a part of the old Blankenship farm and the same is made up of two pieces and parts adjoining each other which said Yeary purchased from the heirs of said Blankenship, the same embracing about 2/3 of one lot & 1/3 of another lot. And the said tract of land is conveyed by said Yeary & wife to the said parties of the second part in the following proportions, that is to say, to the said Rosa B. Smith one undivided fifth part thereof and a right of dower in the remaining four fifths thereof, and to said Napoleon B Smith Leonard L. Smith and Ulysses G. Smith four fifths thereof subject to said dower right, To have and to hold said tract or parcel of land in said proportions with all the appurtenances unto the parties of the second part and their heirs forever, and the said M. L. Yeary & wife hereby covenant that they will warrant generally the title to said tract of land

Witness the following signatures and seals.

M. L. Yeary Seal
her
Louisa X Yeary. Seal
mark

Virginia Lee County towit

I Edward M Russell a justice of the peace in and for the county and state aforesaid do certify that Marquis L. Geary and Louisa Geary his wife whose names are signed to the foregoing writing bearing date March the 22nd 1889 each personally appeared before me in the county aforesaid and acknowledged said writing to be their joint act and deed.

Given under my hand & seal the 26th day of March 1889

E, M, Russell J.P. (Seal)

Rosa B. Smith & others
From } Deed
Marquis L. Geary & wife

(86)

George W Smith Guardian for Napoleon B. Smith 12, Leonard L. Smith 10, & Ulysses G. Smith 8 minor heirs at law of Jonathan L. Smith dead.

Henry H. Geary departed this life after having made his last will and testament which has been duly admitted to record. He left a valuable farm at his death lying on Sugarcreek about 7 miles west of Jonesville containing about 160 acres He left a widdow Ruth Geary Surviving him, who is still living and by the provisions of said will his said widow Ruth is to have the use of said farm during life, so that said farm is still encumbered with that life estate, but when that life estate shall expire then said farm is to go to the children and their descendents of the said Henry H Geary dead. who are eight in number as follows to wit John R. Geary Wm. D. Geary Ky. Henry M. Geary. Marquis L. Geary Elizabeth M Geary who married B Br. W. Barker, Margarett S. Geary married Reuben Taylor. Rachael Geary who married Chas J Taylor and Malinda J. Geary who first intermarried with one Wm McKee & there was born of this marriage one child whose name was B F. McKee. soon after the birth of this child. the said Wm McKee deserted the said Malinda and has not been heard of since. a number of years after her desertion the said Malinda McKee intermarried with one Alfred Cory and there were born of this marriag three children whose names are Henry N. Cory Charles D. Cory and Polly Cory who married a man by the name of Wm Bales. & they now live in Iowa.

The said Malinda Geary died intestate in this county about the Summer of 1883 leaving the said B.F. McKee, Henry H Geary Chas. D Geary and Polly Bales to whom her interest in the lands of her father descended (being one eighth part thereof.

The said B F. McKee after attaining manhood married and of this marriage there was born one child whose name was Rosa B McKee. and after her birth the said B F. Kee died leaving said Rosa B, McKee his only heir at law. And she intermarried with one Jonathan L. Smith who after the birth of your Orators wards departed this life intestate

The said Henry M Geary also died before his father, leaving two children his heirs at law towit Mary now the wife of Robert Baily. and Rachael now the wife of Henry Davis.

Jonathan L. Smith during his lifetime purchased of the said Robert Baily and wife and Henry Davis and wife their undivided interest in the real estate of the said H H Geary dead being one eighth thereof

The said Rosa B Smith widow of of said Jonathan L. Smith and your Orator Geo. H Smith as guardian for said Rosa B. Smith 3 children have exchanged all their interest in said H H Gearys estate to the said Marquis L. Geary for a tract of land containing about 60 acres. lying on the waters of Trading creek.

The said Rosa B having sold and conveyed to said M L Geary her 1/4 of One eighth, and her dower right in the one eighth purchased by her late husband

Memo